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<th>An introduction to the legal system.</th>
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<tr>
<td>Author(s)</td>
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An Introduction To The Legal System

By

Shad S Faruqi
A. The Meaning of Law

1. Law is a term which is used in many different senses eg. laws of science, laws of morality, laws of football, etc.

2. To a lawyer it means the body of rules, recognised and acted on by courts of justice.

3. The law tells you what you must do, or refrain from doing eg. you must not steal - if you do, you will be punished. We may say then that two ideas underlie the concept of law:
   a) Order in the sense of method or system
   b) Compulsion ie. enforcement of obedience to the rules or laws laid down.

4. However, it must not be confused with morals (which are customary rules of behaviour, not enforced by courts but depend on public opinion) eg. the publication of pornography books is illegal but you may find it acceptable. On the other hand a thing might be legal but you think it immoral, for example, fighting in a war.

5. The law of a country is all rules and regulations supported by sanctions (punishments) administered by the states.

6. It is the society that determines what is going to be the laws, i.e. law is created by society eg. cannibalism etc. and society itself is always changing (so therefore law is always changing - it is a living thing!)

7. In a democratic country like Malaysia the law-making bodies ie. members of Parliament get their authority from the people.
II. CLASSIFICATION OF LAW

Law may be divided into two great branches - Public Law and Private Law.

**Public Law**
- Governs relationships between the state and individuals.

- Constitutional Law
  - Concerns with the structure of legislature and executive and judiciary and their relationships with one another.

- Administrative Law
  - Concerns with ministerial and local government agencies and their relationships with individuals.

- Criminal Law
  - Concerns with wrongdoing, doing or offences against the state and punishable by the state.

**Private Law (Civil Law)**
- Governs relationships between individuals rather than state and individuals.

- Law of Contract
  - 1) Deals with whether promises are legally enforceable and what are the legal consequences.

- Law of Tort
  - 1) Civil wrong which is not a contract, e.g., negligence, nuisance, defamation, trespass etc.

- Law of Property
  - Rights of land

- Succession
  - Devolution of property

- Family Law
  - Rights, duties, status of husband and wife, parent and child.
Distinction between Criminal Law & Civil Law

The distinction between a crime and a civil wrong is seen in the legal consequences that may follow the wrongful act, not in what is done. In a crime the behaviour is considered to be of sufficient public concern to justify the intervention of the State. If the act is capable of resulting in criminal proceedings it is a crime. If it is capable of being followed by civil proceedings, it is a tort. Sometimes it may result in both criminal and civil proceedings then it is both a crime and a civil wrong eg. in a car accident, the driver may be prosecuted for the criminal offence of dangerous or careless driving whilst the injured may sue the driver for damages in tort for injuries suffered as a result of the accident.

<table>
<thead>
<tr>
<th>Criminal Law</th>
<th>Civil Law</th>
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<tbody>
<tr>
<td>1. Wrongdoings considered to be offences against the state and punishable by the state.</td>
<td>1. Concerned with rights and duties of individuals towards each other.</td>
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<tr>
<td>2. Object - to punish</td>
<td>2. Object - to compensate -</td>
</tr>
<tr>
<td>3. Crown/prosecutor (prosecutes a crime)</td>
<td>3. Individual sues</td>
</tr>
<tr>
<td>4. Parties are known as prosecutor and accused</td>
<td>4. Parties are called plaintiff and defendant.</td>
</tr>
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C. Sources of Malaysian Law

We can roughly classify the law in Malaysia into:

1) Unwritten law
2) Written law
3) Muslim law
Malaysian Law

Unwritten Law
- not enacted by Parliament

Written Law
- enacted by Parliament

Muslim Law

1. English Common Law and Equity
2. Judicial decisions of High Court and the Supreme Court
3. Customs of local communities which have been accepted as law by courts.

1. Federal Constitution
2. Constitutions of the various States.
3. Legislation - by Parliament - by State Legislatures

1. Applicable only to Muslims.
2. Particularly important in matters relating to marriage, divorce and inheritance.
Introduction to The Malaysian Legal System:
The Court System, the Legal Profession and
the Constitution.

One cannot deny that journalists play an important role in communicating to the public the settlement of cases in courts. But even a journalist must appreciate the following to enable him to perform his task better:

1. The role of the courts.

2. The hierarchy of the Malaysian courts.
   - Article 121 of the Federal Constitution.
   - Subordinate Courts Act 1948.

3. Courts with specific jurisdiction.
   - Syariah Courts.
   - Military Courts.
   - Native Courts.
   - Juvenile Courts.

4. Tribunals in Malaysia.
   - Industrial Court.
   - Special Commissioners of Income Tax.
   - Rent Tribunal.
   - Public Services Tribunal.
   - Professional Disciplinary Boards.

5. Types of proceedings and admission of journalists.
   - S. 101 of Subordinate Courts Act 1948.
   - Public proceedings, proceedings in camera.

6. Protection of Judges and Judicial Officers.
   - S. 107 of the Subordinate Courts Act 1948.

7. Relationship of Legal Profession to the courts and to their clients.


10. Article 5 - Liberty of movement.

11. Contempt of Court.
    - Article 126 of the Federal Constitution.
The Court System

Supreme Court

West Malaysia

High Court (Malaya)

Sessions Court

Magistrates Court

Penghulu's Court

East Malaysia

High Court (Borneo)

Sessions Court

Magistrates Court
### Superior Courts

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<tr>
<th>Superior Courts</th>
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<tbody>
<tr>
<td><strong>High Court</strong></td>
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<tr>
<td>1. High Courts consist of a Chief Justice and four other Judges.</td>
</tr>
<tr>
<td>27 Judges for High Court in Malaya</td>
</tr>
<tr>
<td>8 Judges for High Court of Borneo.</td>
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<tr>
<td>Appointment by YPA of Lord President is after consultation with Prime Minister and Conference of Rulers.</td>
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<table>
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<th><strong>Supreme Court</strong></th>
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<tbody>
<tr>
<td>1. Article 122 of Federal Constitution</td>
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<tr>
<td>Supreme court consists of Lord President, 3 Chief Justices and 4 other Judges.</td>
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<tr>
<td>Appointment of Lord President is by YPA after consultation with Prime Minister and Conference of Rulers.</td>
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### Subordinate Courts

#### Penghulu Courts

1. Penghulu appointed by the Ruler of the State for a particular Mukim.

#### Magistrates Courts

1. Appointed from members of the Judicial and Legal Service.

2. 1st. Class Magistrate
   - Civil Jurisdiction
     - Matters not exceeding 150
     - S. 94 of SCA 1948
   - Civil Jurisdiction
     - try all matters of not exceeding 125,000.
   - Hears appeals from Penghulu's Court.

3. Criminal Jurisdiction
   - Minor offences
     - fine $25
     - S. 96 SCA 1948
   - Person charged before the court may elect to be tried by a Magistrates Court

4. Criminal Jurisdiction
   - try all offences where maximum imprisonment not exceeding 10 years.
   - In sentencing:
     a) Five years imprisonment
     b) Fine $10,000
     c) Whipping 12 strokes
     d) Combine the above.

3. 2nd. Class Magistrates
   - Civil Jurisdiction
     - Matters not exceeding $3,000.
   - Criminal Jurisdiction
     - try all offences where maximum imprisonment not exceeding 12 months.
     - In sentencing:
       a) Imprisonment 6 months
       b) Fine $1,000.
       c) Combine the above.

#### Sessions Courts

1. Sessions Court Judge is member of Judicial and Legal Service.
   - Appointed by YPA on recommendation of Chief Justice.

2. Civil Jurisdiction
   - Civil Jurisdiction
     - try all matters of not exceeding $10,000.
   - No Jurisdiction for:
     - Specific performance or rescission of contracts.
     - Enforcement of trusts.
     - Declaratory decrees
     - Legitimacy of any person.

3. Criminal Jurisdiction
   - S. 63 of SCA 1948
   - Try all offences other than those punishable by death.
   - May pass any sentence allowed by law except death.

3. Criminal Jurisdiction
   - S. 22 of CJA 1948
   - Civil matters where maximum imprisonment not exceeding 12 months.
   - In sentencing:
     a) Imprisonment 6 months
     b) Fine $1,000.
     c) Combine the above.

4. Advisory Jurisdiction
   - Article 130 of F.C. 1963
   - Criminal matters committed within its local jurisdiction.
   - Offences on high seas.
   - Piracy.
   - Extra territorial offences.
   - Security offences.
   - Appellate Jurisdiction
     - S. 26 of CJA.
   - Supervisory and revisionary jurisdiction of civil and criminal matters.
Military Courts

1. Armed Forces Act 1972 (Act 77)
   - Try persons of Armed Forces. No jurisdiction over civilians.
   - Sentences:
     a) If death - to be confirmed by YTA.
     b) Ensure maintenance of discipline and good order among service personnel, example for desertion, disobedience of orders, absence without leave.

Juvenile Court

1. Juvenile Court Act 1947 (Act 90)
   - Try young offenders below 18 years.
   - Closed proceedings.
   - 1st Class Magistrate sits with 2 advisers - One woman.
   - Advisers are nominated by Minister for Social Welfare.
   - Advice on sentence.
   - Sentences:
     a) Bound over for good behaviour.
     b) Correction schools
     c) Probation
     d) Fine
     e) Imprisonment.

Native Courts

1. Sabah
   - Sabah Native Courts Ordinance.
   - Structure
     1) Native Court
     2) District Court
     3) Native Court of Appeal - High Court Judge and 2 native chiefs.

2. Sarawak
   - Native Courts Ordinance (Cap. 163)
   - Structure
     a) District Native Court (1st Class Magistrate, a native officer and 2 assessors)
     b) Native Officer's Court or Chief Court (Chief and 2 assessors)
     c) Headman's Court (Headman and 2 assessors)

3. Generally jurisdiction for breach of native law or custom or sexual and matrimonial offences.

Syariah Courts

1. Court for Muslims.
   - Establishment of court is respectively State matters except for Federal territories, Sabah, Sarawak, Penang and Melaka.

2. Structure:
   a) Qadi Court
   b) Chief Qadi Court
   c) Appeal Committee


4. Civil Jurisdiction:
   - Succession, bethrothal, marriage, divorce, guardianship, charitable and religious trusts.

5. Criminal Jurisdiction:
   - ill-treatment of wife or marriage without court's permission:
     - Fine $1,000
     - Imprisonment 3 years
     - Whipping 6 strokes.
**TRIBUNALS IN MALAYSIA - ADJUDICATION**

**Industrial Court**

1. **Industrial Relations Act 1967.**

2. **Structure:**
   - S. 21 IRA.
   - Court consists of a President (appointed by YPA) and 3 members from panel of independent persons, panel representing employers and panel representing employees.
   - The members are selected by the minister.

3. **Jurisdiction**
   - trade disputes
   - wrongful dismissal of employees

**Special Commissioners of Income Tax**

1. **Income Tax Act 1967**

2. **Structure:**
   - 3 or more commissioners appointed by YPA for a term of 2 years from Attorney General Dept. or other Govt. dept.

3. **Jurisdiction**
   - person dissatisfied with the amount of tax assessed upon him by the Director of Income Tax Dept. can take the case before the commissions.
   - grounds of taxation.

**Public Services Tribunal**

1. **Public Services Tribunal Act 1977 (Act 186)**

2. **Structure:**
   - 3 persons appointed by YPA for a term of 3 years.

3. **Jurisdiction**
   - membership to trade unions.
   - claims for wages and benefits.

**Social Security Appellate Board**

1. **Employees' Social Security Act 1969 (Act 4)**

2. **Structure:**
   - Chairman a person of 10 years standing in Judicial and Legal Service or an advocate and solicitor of the High Court - appointed by YPA.
   - assisted by 2 assessors one representing the employers and one representing the employees.

3. **Jurisdiction**
   - contribution to be paid by employer to employee.
   - contributions to be paid for injury suffered by employee during term of employment.
   - contribution for infection of disease during employment.
   - claim for benefits by employee's dependents.

**Professional Disciplinary Board**

1. **Eg. Legal Profession Act 1976.**

2. **Structure:**
   - Committee consists of 3 members of 7 years standing as advocate and solicitor.

3. **Jurisdiction**
   - to determine the conduct breached by the advocate and solicitor.
   - power of the committee:
     a) strike advocate and solicitor off the roll.
     b) suspension of practice.
     c) fine/penalty $5,000.
     d) censuring of advocate and solicitor.
     e) award cost to affected parties.
The idea of freedom of speech (including freedom of press) raises two broad philosophical and jurisprudential issues:

1. Is press freedom a luxury that the Third World can ill afford due to the formidable threats and challenges faced by democratic governments in nascent societies?

2. Does press freedom refer to the right of the public to know or the right of a few men with wealth and power to disseminate information selectively?

The law can be discussed under two broad headings:

I: Restraints on Access to Information

1. A right to attend and publicize judicial proceedings
   a) The doctrine of 'open court'
   b) Court of Judicature Act 1972 (Act 91), Sections 13 & 15
   c) Juvenile Courts Act (Act 90), Section 5A
   e) Official Secrets Act, 1972 (Act 88) and (Am. Act A 573):
      - S. 2; S.4; S.7A; S.7B; S. 8; S.11.
      - PP v Lim Kit Siang [1979] 2 MLJ 37

2. Access to official government information
   a) A right to know. The concept of open government.
   b) Proposal for a Freedom of Information Act
   c) Official Secrets Act, 1972
   d) Protected Areas & Protected Places Act 1959, S. 4

3. Access to non-governmental information
   b) Companies Act, 1965
   c) National Land Code, 1965 (Act 56/1965)
   d) Banking Act (Act 102), S. 36 on Banking Secrecy
   e) Security Industry Act 1983, Sections 56, 88, 90

II: Restraints on Publication

The restraints may be prior or subsequent so as to affect freedom of speech or freedom after speech.

1. The Constitution - Article 10(1)(a) - freedom of speech and expression - its scope.
2. Constitutionally permissible restrictions on free speech: Art. 10(2)(a) & 10(4)

- Security of the federation
- Friendly relations with other countries
- Public order
- Sovereignty
- Privileges of Parliament
- Contempt of court
- Libel
- Incitement to any offence
- The questioning of "sensitive matters".

3. Articles 149 (subversion) and 150 (emergency)

4. Statutory Limitations on the freedom

a) Printing Presses and Publications Act 1984 (Act 301)

- S. 3: Licence to use printing press
- S. 5: offence to print, import, publish newspaper without permit
- S. 6: grant of permit
- S. 7: undesirable publications
- S. 9: undesirable publications may be refused importation
- S. 10: Deposits
- S. 13: revocation, suspension and transfer of licence and permit
- S. 18: power of seizure or detaining printing press or publication

b) Sedition Act, 1948

- This Act provides for the punishment of acts with "seditious tendency", a person's intention being quite irrelevant.
- PP v Ooi Kee Saik [1971] 2 MLJ 108
- Lau Dak Kee v PP [1976] 2 MLJ 229
- Melon Abdullah v PP [1971] 2 MLJ 280
- Fan Yew Teng v PP [1975] 2 MLJ 235
- PP v Mark Koding [1983] 1 MLJ 111

- Sedition could be committed in any one of the following ways: inciting disaffection against any Ruler or government; inciting unlawful changes to any lawful matter; inciting contempt for the administration of justice; raising discontent amongst the people; promoting ill-will between races or classes; questioning any "sensitive issues" i.e. citizenship, the national languages, special privileges, status of rulers.

c) Internal Security Act, 1960 (Act 82).

- S. 8: powers of preventive detention
- S. 22 - 31: special powers relating to subversive publications.

d) Defamation Act, 1957 Act 286

- S. 4: slander of women
- S. 5: slander affecting professional or business reputation
Defences available to journalists
S. 7 : unintentional defamation
S. 8 : Justification
S. 9 : Fair comment
S. 10 : Apology in mitigation of damages
S. 11 : Absolute privilege for reports of judicial proceedings
S. 12 : Qualified Privilege

e) Copyright Act, 1969
S. 5(1) : Right vests on citizens and permanent resident only.
S. 5(2) : Copyright ends 25 year after death of author
S. 6 : Copyright for works first published in Malaysia

f) Official Secrets Act, 1972 & Amendment Act A 573
- Sections 2, 4, 7A, 7B, 8, 11
- PP v Lim Kit Siang [1979] 2 MLJ 37

The gist of the law is that "official" government information cannot be received or released without prior authorisation. "Official" connotes "information from a government source". A person receiving unauthorised information no matter how innocently has a duty to report the matter to the police and to divulge his source of information.

g) Contempt of Court
* Concept of "imminent and pending proceedings"
* refusal to reveal source of information
* Judicial Proceedings (Regulation of Reports) Act, 1962, Section 3.
* Courts of Judicature Act, 1964, S. 13

h) Contempt of Parliament
Houses of Parliament (Privileges and Powers) FM Ordinance, 1952

i) Obscene Publications
- Indecent Advertisement Act 1953 (Act 259) Sections 3, 4, 5, 6
- Penal Code section 292 : sale of obscene books.
- Medicines (Advertisement & Sale) Act 1956, SS. 3-5

j) Penal Code offences
- S. 298 A : causing disharmony, disunity enmity, hatred
- S. 499, 501 : Criminal libel
- S. 131 : abetting mutiny
- S. 298 : wounding religious feelings

- S. 34 : particulars of financial journalists
- S. 86 : False or misleading statements
- S. 87 : inducing persons to deal in securities.
5. Extra-Legal or Hidden Restraints

a) Government's control over the means of communication. Its monopoly over posts and telecommunications
   - Telecommunications Malaysia Act (Act 20)
   - Public Order Preservation Act (Act 296), Section 9

b) Government or private agencies' control over sources of information.
   - Bernama (Pertubuhan Berita Nasional Malaysia) Act R/1967
   - Reuters, AP, UP etc.

c) Informal "requests" to newspaper by the Government

d) Control over newspapers by its owners/shareholders

e) Media monopoly.

SHAD S. FARUQI

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Though law may be classified in many ways, one of the traditional ways of classifying law is by dividing it into substantive and adjectival law. The adjectival law may further be divided into procedural and evidence and procedural law may again be divided into criminal and civil procedure. Putting the above classification into a diagram it would appear as follows:

**Substantive Law** - defines the rights and liabilities of persons i.e., it tells us what are our rights and liabilities in a given situation. For example, if there has been a breach of contract the law of contract (substantive law) tells us that there are remedies for that breach of contract.

**Adjectival Law** - deals with rules which regulate the way in which those rights (given by substantive law) are enforced in proceedings before the courts.

**Procedural Law** - regulates the steps which must be followed in an action (Criminal and Civil) from the time the case commences to final judgment and enforcement.
2. **Objectives of Rules of Procedure**

1. To provide for an orderly, efficient and fair disposal of cases before the courts.
2. To help determine the issue between the parties to an action.
3. To help organise court's time and convenience.
4. In the case criminal procedure, to find the truth.
5. To make sure the rights given to individuals are not infringed or abused.

3. **Main Sources of Criminal Procedure**

1. Criminal Procedure Code (CPC) (FMS Cap. 6)
2. Courts of Judicature Act 1964
3. Subordinate Courts Act 1948 (R. 72)
4. Police Act 1967
5. Essential Regulations (Security Offences) 1975

**Main Sources of Civil Procedure**

1. Courts of Judicature Act 1964
2. Subordinate Courts Act 1948 (R. 72)
3. Rules of High Court 1980
4. Practice Directions

4. **Types of procedure**

   - Inquisitorial
   - Adversarial

5. **Common terms**
   - Ex Parte
   - Inter Parte
   - In chambers
   - In Camera
   - Prima facie
   - Interim
   - Interlocutory
   - Writ of Habeas Corpus
Mandamus

Matters to be considered and steps to be followed in a Criminal action

- Jurisdiction of Courts
- Arrest
- Search
- Police Investigation
- Powers of Public Prosecutor
- Modes of Trials
- Preliminary Inquiry
- Charges
- Bail
- Procedure at trial
- Sentencing
- Appeals

Matters to be considered and steps to be followed in a Civil action

- Modes of commencing civil action
- Matters before writ
- Writ
- Service of writ
- Default Judgment
- Summary Judgment
- Pleadings
- Trial
- Judgment
- Appeal
- Cost
- Enforcement of Judgment

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